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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XE914

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 45 LCS other than sandbar sharks per vessel per trip to 25 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 25 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2016 fishing season or until NMFS announces via a notice in the **Federal Register** a fishery closure is warranted. This retention limit adjustment will affect directed shark limited access permit holders fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective at 11:30 p.m. local time October 19, 2016, through the end of the 2016 fishing season on December 31, 2016, or until NMFS announces via a notice in the **Federal Register** a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors. See § 635.24(a)(8)(i)-(vi). After considering these criteria as discussed below, NMFS concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year. Since landings are projected to reach 80 percent before the end of the 2016 fishing season, NMFS is reducing the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 45 to 25 LCS other than sandbar per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed in § 635.24(a)(8), which says that:

- The amount of remaining shark quota in the Atlantic region based on dealer

reports;

Based on dealer reports, 108.6 mt dw or 64 percent of the 168.9 mt dw shark quota for the aggregated LCS management group has already been harvested in the Atlantic region. This means that approximately 36 percent of the quota remains. Unless action is taken to slow harvest, fishermen in the Atlantic region may not have an opportunity to fish in the region for the remainder of the year.

- The catch rates of the aggregated LCS management group in the Atlantic region based on dealer reports;

Based on dealer reports, the current catch rates are too high to maintain an open season for the rest of the year. While fishermen are landing sharks within the per-trip retention limit of 45 LCS other than sandbar per trip per day, they are making multiple trips a day that result in high numbers of aggregated LCS being caught rapidly throughout the fishery. This high daily average catch rate means that aggregated LCS are being harvested too quickly to provide equitable fishing opportunities throughout the season. If the per trip limit is left unchanged, aggregated LCS would likely be harvested at such a high rate that the fishery would close in mid-October.

- Estimated date of the aggregated LCS management group closure based on when the landings are projected to reach 80 percent of the quota;

Once the landings reach 80 percent of the quota, NMFS would close the aggregated LCS management group as well as any other management group with “linked quotas” such as the Atlantic hammerhead shark management group. Current catch rates would likely result in landings reaching this limit by mid-October. A closure would preclude fishing opportunities in

the Atlantic region for the remainder of the year. Reducing the trip limit is expected to reduce the catch rates and allow for the fishery to remain open for the remainder of the year.

- Effects of the adjustment on accomplishing the objectives of the 2006

Consolidated HMS FMP and its amendments;

Reducing the retention limit for the aggregated LCS and hammerhead management group from 45 to 25 LCS per trip would allow for fishing opportunities later in the year consistent with the FMP's objectives to provide equitable fishing opportunities throughout the fishing season and to limit bycatch and discards.

- Variations in seasonal distribution or migratory patterns of aggregated LCS based on scientific and fishery-based knowledge; and

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. As a result, by slowing the harvest and reducing landings on a per-trip basis, both fisheries could remain open for the remainder of the year.

- Effects of catch rates in one part of the Atlantic region precluding vessels in another part from having a reasonable opportunity to harvest a portion of the aggregated LCS management group quota.

Based on dealer reports, and given NMFS' notice to the regulated community (80 FR 74999, December 1, 2015; 81 FR 18541, March 31, 2016; and 81 FR 44798, July 11, 2016) that a goal of this year's fishery was to provide fishing opportunities throughout the fishing season, NMFS has concluded that the aggregated LCS quota is being harvested too quickly to meet conservation and management goals for the fishery. If the harvest of these species is not slowed

down, the fishery would likely close in mid-October. Closing the fishery would prevent fishermen from other parts of the Atlantic region from having the same opportunities to harvest the aggregated LCS quota later in the year.

On December 1, 2015 (80 FR 74999), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. NMFS had published a proposed rule on August 18, 2015 (80 FR 49974) and accepted public comment. In the final rule, NMFS also announced that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing the retention limit to 45 LCS other than sandbar sharks per vessel per trip around July 15, 2016, after considering the appropriate regulatory adjustment criteria. In March 2016, dealer reports indicated that landings had exceeded 20 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 36 to 3 LCS other than sandbar per vessel per trip on April 2, 2016 (81 FR 18541; March 31, 2016) after considering the inseason retention limit adjustment criteria listed at § 635.24(a)(8). As NMFS announced in the 2016 shark season final rule (81 FR 44798; July 11, 2016), we increased the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 3 to 45 LCS other than sandbar per vessel per trip after considering the regulatory criteria. Based on dealer reports through September 30, 2016, approximately 34 percent and 54 percent of the aggregated

LCS and hammerhead shark quotas remain, respectively. At this point in the season, fishermen in the Atlantic region may not have an opportunity to fish in the region for the remainder of the year if the retention limits are not reduced.

Accordingly, as of 11:30 p.m. local time October 19, 2016, NMFS is reducing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 45 LCS other than sandbar sharks per vessel per trip to 25 LCS other than sandbar sharks per vessel per trip. If the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, then they are exempted from the retention limit adjustment.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 25 LCS other than sandbar sharks per vessel per trip for the rest of the 2016 fishing season, or until NMFS announces via a notice in the **Federal Register** a fishery closure, is warranted.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat., proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA),

finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest.

Providing prior notice and an opportunity for comment is impracticable because the catch and landings that need to be reduced are ongoing and must be reduced immediately to meet conservation and management objectives for the fishery. Continued fishing at those levels during the time that notice and comment would take place would likely result in early closure of the fishery, contrary to the objectives of the existing conservation and management measures in place for these species. These objectives include providing equitable fishing opportunities and ensuring that bycatch and discards are minimized. Allowing fishing to continue at the existing rates even for a limited time is contrary to these objectives and would thus be impracticable. It would also be contrary to the public interest because continued catch at the current rates, even for a limited period, could result in eventual early quota closures and potential overharvests. The AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) for the same reasons. This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866. NMFS has concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 14, 2016

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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